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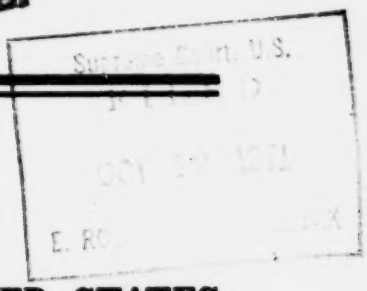

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-365

LYLE E. STRAHAN,

Petitioner

Versus

WILLIAM L. STRAHAN and MARTHA H. STRAHAN,

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES OF AMERICA:

QUESTION PRESENTED

The question presented in this case is whether an illegitimate child who was not acknowledged by his alleged father, who had no familial relationship with him and whose alleged father died partially intestate, is denied Equal Protection of the Laws by the application of Louisiana's laws of inheritance

which provide that the decedent's legitimate mother and legitimate brother inherit that portion of the estate not disposed of by will to the exclusion of the alleged illegitimate child.

SUPPLEMENTAL STATEMENT OF THE CASE

Petitioner (plaintiff) instituted a diversity action in the United States District Court for the Western District of Louisiana *alleging* that he is the son of Opal Dolphin Strahan and the late Dr. Earl O. Strahan who died in Louisiana at his residence and legal domicile, August 13, 1964. Succession proceedings were commenced in accordance with law and respondents were sent and put into possession of the estate left by Dr. Strahan pursuant to the laws of the State of Louisiana. This action was commenced September 30, 1968, by petitioner Lyle E. Strahan against William L. Strahan, decedent's brother, and Martha H. Strahan, decedent's mother. The suit alleges the wrongful conversion of Dr. Strahan's estate.

Depositions of petitioner and his mother reveal that Dr. Strahan was never married to Opal Dolphin and that *if* petitioner is the son of the decedent, he was born out of wedlock. Petitioner was not formally acknowledged by his alleged father and did not live with him. Neither did the decedent live with Opal Dolphin.

The decedent disposed of only one part of his estate by written will (to his mother), therefore Louisiana laws of intestacy (no will) are applicable.

Based upon the state's statutory scheme which makes no provision for the inheritance by an illegitimate son of any property of his father when there exists a legitimate ancestor (decedent's mother) and a legitimate collateral heir (decedent's brother), respondents filed a motion for summary judgment relying on the evidence contained in the deposition.

Petitioner then amended his complaint to challenge the constitutionality of the applicable statutory provisions of Louisiana. The grounds for challenging the statutes were not specified in the amended complaint.

The District Court rendered judgment in favor of respondents, sustaining the motion for summary judgment. *Strahan v. Strahan,* 304 F. Supp 40 (W.D. La., 1969).

Petitioned appealed that decision to the United States Court of Appeals for the Fifth Circuit. Relying on the intervening opinion of this Court in *Labine v. Vincent* —— U.S. —— 91 S.Ct. 1017 (March 29, 1971), the Court of Appeals affirmed the decision of the District Court.

Petitioner now attempts to convince this court that *Labine v. Vincent* was "erroneous, manifestly unjust and contrary to the constitution" and should be overruled and that the present case is a proper one for taking such action.

ARGUMENT

LABINE V. VINCENT SHOULD NOT BE OVERRULED

Respondents respectfully submit that the position taken by the majority of this Court in *Labine* was correct and that the decision should not be overruled. The Court, after the submission of briefs by the parties and amici curae presenting an exhaustive examination of the nature of Louisiana's laws of inheritance in light of constitutional protections, concluded:

> ". . . in the circumstances presented in this case, there is nothing in the vague generalities of the Equal Protection and Due Process clauses which empower this Court to nullify the deliberate choice of the elected representatives of the people of Lou-

isiana", *Labine v. Vincent*, supra, ——U.S.——, 91 S.Ct. 1021.

Due to the short interval of time since this whole matter was considered by the Court, respondents will not burden the Court with the arguments previously presented to it for upholding Louisiana's applicable laws of inheritance. Respondents, however, do reurge the arguments of Appellees and Amici Curae in *Labine*. As the majority of the Court held in *Labine*, we strongly urge that Louisiana's laws of inheritance under attack here do not deprive petitioner of constitutional protections.

Moreover, we respectfully submit that *Labine v. Vincent* should not be overruled in light of the short time interval since its decision and the confusion, chaos and resulting instability — in an area of the law where stability and predictability is critical — which would result from such a reversal.

ASSUMING *AGUENDO THAT LABINE V. VINCENT* SHOULD BE RECONSIDERED, THE PRESENT CASE IS NOT A PROPER VEHICLE FOR SUCH RECONSIDERATION

There are significant features of the present case which renders it an inappropriate vehicle for reconsideration of *Labine*.

Petitioner is not the publicly acknowledged son of the decedent. In *Labine*, Mr. Justice Brennan, speaking for the dissent concluded:

> "In my view, Louisiana's intestate succession laws, insofar as they treat illegitimate children *whose fathers have publicly acknowledged them* differently from legitimate children, plainly violate the Equal Protection Clause of the Fourteenth Amendment." *Labine*, supra, ——U.S.——, 91 S.Ct. at 1022. (emphasis added)

A great part of the rationale of the dissent is predicated upon there being a publicly acknowledged child.

Unlike the situation in *Labine* where (a) the child was publicly acknowledged before a notary and two witnesses, (b) the child's birth certificate identified the father and mother by name, (c) the child's birth certificate was changed a month later to give the child his father's name, (d) the father and mother lived together and (e) the father and mother raised the child until the father's death, the petitioner in the present case was not publicly acknowledged; the mother and alleged father did not live together; and the alleged father did not raise the child. There is no evidence that the alleged father even knew of the child's existence. Certainly there was no "intimate, familial relationships between a child and his own father" *Levy v. Louisiana*, 391 U.S. 68, 71, 88 S.Ct. 1509, 1511 (1968)

The dissent noted in *Labine*,

> "Louisiana might be thought to have an interest in requiring people to go through certain formalities in order to eliminate complicated questions of proof and the opportunity for both error and fraud in determining paternity *after* the death of the father." ——U.S.——, 91 S.Ct. at 1027. (emphasis added)

We strongly urge in the present case, where no formalities were followed, the major objections of the dissent are met and that this case would be inappropriate for reconsideration of *Labine*.

Another significant difference between *Labine* and the present case is that *the decedent in Labine left no will.* In the present case the decedent did partially dispose of his estate by testament. He made a specific bequest to his mother. The remaining estate devolved under the laws of intestacy. Mr. Justice Brennan writing for the dissent in *Labine* rejected

the contention that the father — who died wholly intestate — wished the results obtained by operation of state law. *Labine v. Vincent,* supra, ——U.S.——, 91 S.Ct. at 1025. Here, however, Dr. Strahan made a conscious and formal choice to bequest certain property to his mother. In so doing, it is not unreasonable to conclude that, being a well-educated person, he *intended* that the remainder of his estate devolve according to Louisiana's law of intestacy. Had the decedent wished to change the order of inheritance he at all times before death could have declared that intention in his testament. Under the circumstances here there is a sound basis for concluding that the decedent did not intend to bequeath any part of his estate to an alleged illegitimate child.

CONCLUSION

It is respectfully submitted that the Courts below have correctly determined the issues presented in this case and further that the decision in *Labine v. Vincent* is correct. Even if the Court desires to reconsider *Labine,* this case does not present a proper vehicle for such reconsideration.

For the reasons set forth above, it is respectfully submitted that the petition for certiorari should not be granted.

Respectfully submitted,

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By: _____
A. Leon Hebert

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing brief has been served upon counsel of record by mailing the same postage prepaid on this _____ day of _____, 1971.

_____

A. Leon Hebert